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DEC 22 2005

OFFICE OF PETITIONS

In re Application of :
David A. Rahdert, et al. : DECISION ON PETITION
Application No. 10/676,729 : UNDER 37 CFR 1.78(a)(3)
Filed: October 1, 2003 : AND 37 CFR 1.78(a)(6)
Attorney Docket No. 9542.18427-FOR :

This is a decision on the renewed petition, filed July 25, 2005, which is being treated under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) to accept an unintentionally delayed claim under 35 U.S.C. §§ 120, 365(c) and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional where there is a question whether the delay was unintentional.


All requirements being met, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) to accept an unintentionally delayed claim for priority under 35 U.S.C. § 120 and § 119(e), is granted.


The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) should not be construed as meaning that the application is entitled to the benefit of the filing date of the prior-filed applications. In order for the application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §120 and 1.78(a)(1) and (a)(2) and under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed applications, accompanies this decision on petition.

Any questions concerning this matter may be directed to Sherry D. Brinkley at (571) 272-3204

This application is being forwarded to Technology Center Art Unit 3738 for appropriate action on the amendment submitted July 25, 2005, including consideration by the examiner of the claim under 35 U.S.C. §§ 120, 365(c) and 119(e) for the benefit of the prior-filed applications.


Sherry D. Brinkley
Petitions Examiner
Office of Petitions


Frances M. Hicks
Petitions Examiner
Office of Petitions

ATTACHMENT : Corrected Filing Receipt

